,klHON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.19379 of 1999

Between:

Mohd. Khaleel and others

… Petitioners

And

The Chairman & Managing Director,
A.P. Transco, Hyderabad and others

… Respondents

:: ORDER::

Counsel for the Petitioners: Kum.Padma Saranappa with Smt.P.A. Kamaleswari, Advocate

Counsel for the respondents: Shri Samineni Kishore

February 14, 2007

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In this petition, the petitioners have prayed for issue of a mandamus to the respondents to regularise their services.

The aforementioned prayer of the petitioners is founded on the following assertions:

1) that they are employed as Village Electricity Workers in Siddipet Division of the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board');
2) that they are drawing salary @ Rs.600/- per month;
3) that the work being done by them is of perennial nature, and
4) even though in terms of the policy contained in B.P.Ms.No.36, dated 18-5-1997, they are entitled to be regularly absorbed in the services of the Board, the respondents arbitrarily rejected their candidature.

In support of their claim, the petitioners have placed the following documents on record:

1) Letter No.643/79/A4-Pts, dated 7-3-1979 issued by Collector, Medak permitting the panchayats to post Helpers (part-time) and claim reimbursement from the Board;
2) Letter No.DEE.Op.Spdt.Adm.C2.D.No.142/1989, dated 19-1-1989 sent by Divisional Engineer, Electrical, Operation, APSEB, Siddipet to the Sarpanch of Gram Panchayat, Majeedpally Village, Wargal Mandal in the matter of appointment of Shri Md. Khaleel, Village Electricity Worker.
3) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri Md. Khaleel.
4) Letter No.DEE.Op.Sdpt.Adm.C2.D.No.1129/89, dated 31-3-1989 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Tunki Kalsa Village, Wargal Mandal, Medak District

in the matter of appointment of Shri Md.Wazid as Village Electricity Worker.

5) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri Md.Vajeed Ali.

6) Letter No.DEE.Op.Sdpt.Adm.C.2.D.No.589/90 dated 3-4-1990 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Ambarapet, Wargal Mandal, in the matter of appointment of Shri K. Anjaiah as Village Electricity Worker.

7) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri K. Anjaiah.

8) Letter No.DEE.Op.Sdpt.Adm.C.2.D.No.3198/89 dated 19-12-1989 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Girmapur Village, Wargal Mandal, in the matter of appointment of Shri Ch.Sanjeeva Reddy as Village Electricity Worker.

9) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri Ch. Sanjeeva Reddy.

10) Letter No.DEE.Op.Sdpt.Adm.C.2.D.No.588/90 dated 3-4-1990 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Neemtoor, Wargal Mandal, in the matter of appointment of Shri K. Sathaiah as Village Electricity Worker.

11) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri K. Sathaiah.

12) Letter No.DEE.Op.Sdpt.Adm.C.2.D.No.4792/87 dated 30-11-1987 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Neemtoor, Wargal Mandal, in the matter of appointment of Shri M. Rami Reddy as Village Electricity Worker.

13) Service certificate dated 16-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri M. Rami Reddy.

14) Letter No.DEE/Op/Sdpt/Adm/C.2/D.No.3430/90 dated 17-1-1990 sent by the Divisional Engineer, Electrical, Operation, A.P.S.E.B., Siddipet to the Sarpanch of Gram Panchayat, Veloor, Wargal Mandal, in the matter of appointment of Shri Fakeer Dasthagir as Village Electricity Worker.

15) Service certificate dated 20-8-1999 issued by Additional Assistant Engineer, Operation/A.P. Transco, Gowraram in favour of Shri Fakeer Dasthagiri.

16) Copy of B.P.(P & G Per.) Ms.No.36, dated 18-5-1997.

In the counter filed on behalf of the respondents, it has been averred that none of the petitioners is qualified for the post of Lineman and, as such, they could not be appointed on that post. It has been further averred that all the available 50% vacancies in the cadre of Lineman were filled by appointing ex-casual labours. The genuineness of the certificates produced by the petitioners has also been questioned in the counter-affidavit. For the sake of convenient reference, paragraph 4 of the counter-affidavit filed by Shri P.V.R. Prasad, Chief General Manager/HRD, APCPDCL, Hyderabad is reproduced below:

> "4. In reply to para 4, it is to state that the filling up 50% of vacancies earmarked by Ex-Casual Labours/VEWs and Contract Labours for existing vacancies in the category of JLM/LDC/Typists and Sub-Engineers. The petitioners have applied to the post of Junior Lineman, in the category of Junior Lineman all the vacancies are filled up with eligible Ex-Casual Labours and Village Electricity Workers as per merit, mandays and with Rule of Reservation. Out of 4 tests conducted to the petitioners at the time of interviews, they have failed the test of "Read and Write". For appointment for Junior Lineman post the requisite qualification for contract labour are S.S.C. and I.T.I., the petitioners are only a SSC failed candidate. As per Memo No.Addl.Secy/DGM/AS(IR)/PO.II/A1/1170/99, dt: 3-12-1999, the service certificate produced by the candidate should be signed by the A.P. Transco official i.e., AAE/AE/ADE duly

verifying with reference to agreement under which the particular contract is engaged i.e. prior to 18-5-1997 and confirming that the check measurement is after 18-5-1997. The Service Certificate produced by the petitioners it was issued by M/s.Ali and Sons, Electrical Engineering Company as well as M/s.S & S Enterprises are not in consonance with the said memo. Further, it is to inform that as per B.P.Ms.No.271, Dt.31-12-1997 (working instructions to the B.P.Ms.No.36, dt:18-5-1997) order of preference (subject to eligibility) for appointment under B.P.Ms.No.36, dt: 18-5-1997 is as follows:

a) Ex-Casual labours who obtained court orders and interviewed.
b) Village Electricity Workers
c) Contract Labours

There were 99 Nos. of Junior Lineman vacancies earmarked under B.P.Ms.No.36 towards 50% quota existing as on 18-5-1997. These 99 vacancies were already filled up with eligible Ex-Casual Labours and Village Electricity Workers. The turn of Contract Labourers has not come up for consideration as there were a good number of eligible Ex-Casual Labours and Village Workers were available. Since the petitioners are contract labour, their case has not been considered for appointment. As there was no contract labour similarly situated like petitioners were appointed in Junior Lineman post no in justice. Presently all the vacancies earmarked under B.P.Ms.No.36, dt:18-5-1997 towards 50% quota have been filled up by eligible Ex-casual Labours and Village Electricity Workers. Further, B.P.Ms.No.36, Dt:18-5-1997 is a scheme providing one time settlement for appointment of 50% vacancies existing as on 18-5-1997, as such no future vacancies can be earmarked under the said B.P."

Kum. Padma Saranappa, learned counsel for the petitioners fairly submitted that four of the petitioners have not passed S.S.C. or equivalent examination and none of the petitioners possesses the qualification of I.T.I. in Electrician trade or vocational certificate in

Electrician trade, but argued that even if the petitioners are treated ineligible for appointment as Linemen, the respondents are duty bound to consider their candidature for appointment as Class IV employees.

In the context of the last mentioned submission of the learned counsel, I enquired from her as to how many posts in the cadre of Class IV employees were available on the cut-off date i.e. 18-5-1997 specified in B.P.Ms.No.36, dated 18-5-1997 and how many persons were appointed on the basis of the exercise undertaken in furtherance of the policy framed by the Board, but Kum.Padma could not give any reply. Therefore, it is not possible to entertain the oral prayer made by the learned counsel that the respondents should be directed to absorb the petitioners on Class IV posts.

As regards the petitioners' claim for appointment on the posts of Lineman, it is sufficient to observe that four of them do not possess academic as well as technical qualifications prescribed by the Board and the remaining do not possess the technical qualification. Therefore, the Court cannot issue a mandamus to the respondents to appoint them as Linemen.

The policy decision taken by the Board to consider ex-casual labour, village electricity worker and contract labour for appointment in the regular establishment envisaged consideration of the candidature of only those who possessed the prescribed qualifications. This is evinced from the contents of B.P.Ms.No.36, dated 18-5-1997, which is reproduced below:

ANDHRA PRADESH STATE ELECTRICITY BOARD:
VIDYUT SOUDHA ::: HYDERABAD

Estt. – APSE BOARD – filling up of 50% existing vacancies in initial recruitment cadres by Ex-casual labour who obtained court orders and Village Electricity Workers – ORDERS – Issued.

B.P. (P & G. Per) Ms.No.36, Dated: 18-5-1997

Read the following :-

1. Minutes of Joint Meeting dated 5-3-96 with the three Recognised Unions.
2. B.P. (P & G. Per) Ms.No.228, dt.27-1-97
3. B.P. (P & G. Per) Ms.No.17, dt.22-4-97
4. Gvoernment's D.O. Lr.No.21207/Ser.A.2193 E. Deptt., dated 18-5-1997

PROCEEDINGS:

In the Joint Meeting held on 5-3-96 with the three recognized unions, it was agreed, inter alia, to fill up 50% of the vacancies of the following initial recruitment cadres on receipt of permission from Government, by considering the cases of Ex-casual labour covered by court cases who have to be given second chance, contract labour and Village Electricity Workers.

JLM/JPA/JA/LDC/RC/Typist/Sub-Engineers

2. In the reference second cited, certain guidelines have been issued to consider these cases for appointment against 50% vacancies in the above mentioned categories.

3. The A.P.S.E. Board has re-examined the issue in the light of the orders issued by the Government in the reference last cited and also the developments that took place with reference to the abolition of 33 categories of contract labour in Generating Stations in G.O.Ms.No.41, Labour Department, dt.23-9-96 and decided to consider the cases of Ex-casual labour covered by court cases who have to be given second chance, Village Electricity Workers and Contract Labour not covered by 33 abolished categories in Generating Stations, against 50% of existing vacancies in the above initial recruitment cadres.

4. The A.P.S.E. Board accordingly issues the following orders in

supersession of the orders issued in the references 2 and 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33 abolished castegories in generating stations shall be considered for selection and appointment against 50% existing vacancies.

5. The guidelines for selection of the candidates from the above categories shall be as follows:

a) Age: Age shall be reckoned as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of age.

b) Educational Qualifications: Educational Qualifications shall be as per Board's service regulations in force at the time of their first engagement. There shall be no relaxation of educational qualifications or other relevant technical qualifications with are prescribed in the service regulations for such appointment.

c) Seniority: The Seniority shall be reckoned based on the total period of service rendered by the respective candidates in the Unit as per muster rolls/wage register or as per the records maintained under the contract labour (Regulation and Abolition) Act, 1970. Separate seniority

list shall be prepared for each category as per their eligibility. The continuous period of working shall be taken for purpose of reckoning in seniority in respect of village Electricity workers.

d) Rules of Reservation: The rule of reservation as per roster in terms of Reg.22 of A.P.S.E.B. Service Regulation Part-II shall be strictly followed.

e) Selection Committee:

i. Director personnel.

ii. Concerned Chief Engineer from Generating Station/Zone

iii. Deputy Secretary (Personnel)

iv. Director (Industrial Relations) –Member Convenor.

6. The Selection Committee constituted above shall select the candidates suitable for appointment for each category and communicate the lists to the concerned appointing authorities. They shall appoint the selected candidates depending upon vacancies available duly adopting the rule of reservations in terms of Reg.22 of A.P.S.E. Board Service Regulations Part-II."

The conditions laid down in B.P.Ms.No.36, dated 18-5-1997 were reiterated in B.P. (P & G. Per) Ms.No.271, dated 31-12-1997, which is also reproduced below:

ANDHRA PRADESH STATE ELECTRICITY BOARD

ABSTRACT

Establishment – Andhra Pradesh State Electricity Board – Filling up of 50% of the existing vacancies (as on 18-5-1997) by Ex.Casual Labour/Village Electricity Workers/Contract Labour – Working instructions – Issued.

B.P. (P & G. Per) Ms.No.271, Dated: 31-12-1997

Read the following :-

1) B.P. (P & G. Per) Ms.No.36, Dt. 18-5-97.
2) B.P. (P & G. Per) Ms.No.95, Dt.17-7-97.

3) Bd's Memo No.DIR/DM (IR)/PO-II/A3/131/96, Dt.21-8-97
4) Bd's Memo No.DP/DIR/DM IR)/PO-II/131/96, Dt.28-8-97
5) Bd's Memo No.DP/DIR/DM(IR)/PO-II/131/96, Dt.13-9-97.
6) B.P. (P & G. Per) Ms.No.261, Dt. 19-12-1997.

…

PROCEEDINGS :

An agreement was reached on 5-3-96 between the Andhra Pradesh State Electricity Board and the recognised Unions namely A.P.E.E. Union (Regd.No.1104), A.P.S.E.B. Employees Union (Regd.No.327) and Telugunadu Vidyut Karmika Sangam (Regd. No.B-1245) wherein inter alia it has been agreed to fill up 50% vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour working in other than (33) abolished categories. Mention of this demand was also made in the agreement dated 18-5-97 with the above Unions.

2) In the B.P. first cited, orders were issued for filling up of 50% existing vacancies in initial recruitment cadres by Ex-Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour engaged in other than (33) abolished categories of Generating Stations.

3) Interviews have been conducted in Zones/Circles/Generating Stations for filling up of the 50% existing vacancies as on 18-5-97 of initial recruitment cadres i.e. Jr.Lineman/Jr.Plant Attendant/ Jr.Assistant/LDC/Typist/Revenue Cashier/Sub-Engineer by the Selection Committee constituted in the B.P. cited and subsequent amendments thereon.

4) In the B.P. 6th cited, orders have been issued that the Andhra Pradesh State Electricity Board has decided to fill up 50% vacancies in initial recruitment cadre existing as on 18-5-97 by the Ex-Casual Labours/Village Electricity Workers/Contract Labours engaged in other than 33 categories found suitable and selected by the Selection Committees constituted by the Board and it has been further mentioned that necessary working instructions to the competent authority will be issued separately.

5) The Andhra Pradesh State Electricity Board after careful consideration, issues the following working instructions for filling up of 50% vacancies existing as on 18-5-97 in the initial recruitment cadre i.e. Jr.Lineman/Junior Plant Attendant/Junior Assistant/ L.D.C./Revenue Cashier/Typist/Sub-Engineer for which interviews have been conducted with the eligible / suitable candidates form among the Ex.Casual Labour who obtained Court Orders, Village Electricity Workers and Contract Labour not engaged in (33) abolished categories.

i) **Eligibility** :-

a) Ex.Casual Labour: The Ex.Casual Labour who obtained Court Orders on any ground and who satisfy the conditions stipulated in Bd's Memo No.OSD(P)/DM-I/A3/1138/85-1, Dt.26-8-85 in respect of Operation Circles and Bd's Memo No.DP/DM-I/A(b)2/1162/88-1, Dated 4-10-88 in respect of T.L.C. Circles and Bd's Memo No.DP/DM-I/A(b)2/1163/88-1, Dt.5-10-88 in respect of Projects are eligible for consideration.

b) Village Electricity Workers: Those who are working as on 18-5-97 as Village Electricity Workers are only eligible for consideration.

c) Contract Labour: The Contracdt Labour engaged by a Contractor having a valid license issued by a competent authority under the Contract Labour (Regulation & Abolition) Act, 1970 and Regulations made therein and working as on 18-5-97 are only eligible for consideration. The clarification issued in Bd's Circular Memo No.DP/DIR/DM (IR)/POII/131/96, dt.28-8-97 and Memo No.DP/DIR/DM (IR)/PO-II/131/96, Dt.13-9-97 should also be kept in view.

ii) **Unit of Operation**: The candidates of the above categories have to be considered in the respective circles / Generating Stations against 50% vacancies existing as on 18-5-1997.

iii) **Age**: Age shall be reckoned as per the Service Regulations in force as on the date of first engagement. There shall be no relaxation of the age.

There are specific directions from the Court to consider the cases of over aged/under aged, such directions may be honoured subject to other eligible criteria and after exhausting any remedy by appeal duly indicating a clause in the appointment order.

iv) **Educational Qualifications**: Educational qualifications shall be as per the Service Regulations in force as on the date of first engagement. There shall be no relaxation of Educational Qualifications or other relevant technical qualifications which are prescribed in the Service Regulations. The Clarification issued in Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dated 13-09-1997 may be adhered to. If there are specific directions by the Court to consider the cases without insisting on the prescribed qualification, such directions may be honoured subject to other eligible criteria and after exhausting any remedy by appeal duly indicating a clause in the appointment order.

v) **Seniority**: The seniority shall be reckoned based on the total period of service rendered by the respective candidates in the unit in respect of Ex-Casual Labour and Village Electricity Workers and as per muster rolls/wage registers or as per the records maintained under the Contract Labour (Regulations & Abolition) Act, 1970 in respect of Contract Labour. Separate Seniority list shall be in respect of Contract Labour. Separate seniority list shall be prepared for each category as per their eligibility. The clarification issued in the Board's Memo No.DP/DIR/DM (IR)/PO.II/131/96, dt: 13-09-1997 may be adhered to.

vi) **Rules of Reservation**: The Rule of Reservation as per roster in terms of Regulation 22 of Andhra Pradesh State Electricity Board Service Regulations Part.II shall be strictly followed.

vii) **Order of Preference**: (Subject to Eligibility).

a) Ex-Casual Labour who obtained Court order and interviewed.
b) Village Electricity Workers
c) Contract Labour

6) If any Court directions are received after the interviews are

conducted to consider the cases of Ex-Casual Labours, Village Electricity Workers and Contract Labour, interviews may be conducted to such cases once in 3 months commencing from January-1998, for consideration against the existing vacancies/ future vacancies as the case may be.

7) In cases where the writ petitioners are not found eligible for selection, speaking orders may be issued indicating the reasons of their ineligibility. Copy of such orders may invariably be marked to standing legal adviser and to the counsels for petitioners.

8) The Chief Engineers are also informed that they should keep in mind the Court directions if any while issuing appointment orders.

9) The Chief Engineers are further requested to follow all other rules and regulations of the Board relating to appointment which are in vogue.

10) All the required formalities may be completed and further orders from Andhra Pradesh State Electricity Board awaited for releasing appointment orders.

(BY ORDER AND IN THE NAME OF A.P. STATE ELECTRICITY BOARD)

A.K. KUTTY
MEMBER SECRETARY"

Although the service regulations framed by the Board under Section 79(c) of the Electricity (Supply) Act, 1948 do not specify the qualifications for the post of Lineman, the same will be deemed to have been prescribed vide B.P.Ms.No.1048, dated 23-9-1989 read with Memo No.DP/DM-1/A2/762/94-1, dated 23-10-1994. For the sake of reference, the relevant portions of B.P.Ms.No.1048, dated 23-09-1989 and Memo dated 23-10-1994 are reproduced below:

"**B.P.Ms.No. 1048:**

Proceedings:

As per the existing O.S.S. Non-Statutory Rules the following are the qualifications prescribed for the post of Helper.

i) Ability to read and write.

ii) One year practical experience either in O&M/Construction works.

The above qualifications were prescribed in the year 1958 and continued as such till todate. But the time of prescribing the above qualifications there were no qualified candidates. But, in view of the above circumstances, several persons with academic qualifications and technical qualifications are available now. It is therefore considered desirable to prescribe higher qualifications for direct recruitment of Helpers.

The A.P. State Electricity Board after careful consideration prescribes the following qualifications for the post of Helpers.

i) A pass in SSLC/SSC/10th class;

ii) A pass in ITI preferably with Electrician Trade or

iii) Vocational course in Electrical trade.

These orders will come into effect from the date of issue."

Memo No.DP/DM-1/A2/762/94-1:

The issue regarding re-designation of Helper is under consideration of the Board since long back.

2. After careful consideration the APSE Board directs that posts of 'Helper' in O&M/Construction establishment shall be redesignated as indicated below:

i) 'Junior Lineman' – in Operation circles/TLC/Construction circles etc;

ii) 'Junior Plant Attendent' – in Generating Stations/Projects.

3. However there shall be no change in functions and duties, service conditions etc; and these orders are only mere redesignation of the posts.

4. These orders shall come into force with immediate effect."

The petitioners have neither challenged the vires of B.P.Ms.No.1048, dated 23-9-1989 or Memo dated 23-10-1994 nor they have prayed for quashing the same. Therefore, their eligibility to

be appointed as Junior Lineman will have to be determined with reference to the above reproduced qualifications.

As per their own admission, petitioner Nos.1, 2 and 7 have passed 10th class, petitioner Nos. 3 to 6 are 7th class pass, 5th class pass, 10th class failed and 4th class pass. Neither of them has passed I.T.I. or Vocational course in Electrical Trade. It is, thus, evident that petitioner Nos. 3 to 6 do not possess the prescribed academic qualification i.e. SSLC/SSC/10th Class pass as also technical qualification i.e. I.T.I. or Vocational course in Electrical Trade. Petitioner Nos.1, 2 and 7 do not possess the technical qualification. As regards petitioner No.8, the affidavit of Shri R. Manikyam (petitioner No.2) is silent. Therefore, it is reasonable to presume that he too does not possess the prescribed qualifications. In view of this, it must be held that rejection of the candidature of the petitioners does not suffer from any legal infirmity and the Court cannot direct the respondents to appoint them as Linemen by ignoring the factum of their ineligibility.

At the cost of repetition, I consider it proper to reiterate that the policy contained in B.P.Ms.No.36, dated 18.05.1997 envisages consideration of the candidature of only those who fulfill the prescribed qualifications, and, as none of the petitioners possesses the qualifications prescribed by the Board, the refusal of respondent No.3 to entertain their candidature for appointment as Junior Lineman cannot be termed as illegal.

In **State of M.P. v. Shyama Pardhi**[1], the Supreme Court considered the question whether termination of the service of an employee who does not possess the qualifications prescribed for appointment as Auxiliary Nurse-cum-Midwife can be declared illegal

on the ground of violation of the rules of natural justice and answered the same in negative by making the following observations:

> "It is now an admitted fact across the Bar that the respondents had not possessed the prerequisite qualification, namely, 10+2 with Physics, Chemistry and Biology as subjects. The Rules specifically provide that qualification as a condition for appointment to the post of ANM. Since prescribed qualifications had not been satisfied, the initial selection to undergo training is per se illegal. Later appointments thereof are in violation of the statutory rules. The Tribunal, therefore, was not right in directing the reinstatement of the respondents. The question or violation of the principles of natural justice does not arise……."

In **Pabitra Mohan Dash v. State of Orissa**[2], the Supreme Court held that the appellant who did not have seven years teaching experience essential for appointment as Head Master does not have any right to continue on the post despite the fact that his appointment was approved by the competent authority. Some of the observations made in that judgment, which have bearing on the case in hand, are extracted below:

> "Admittedly, with effect from 29-5-1977 Regulation 17 in the Board of Secondary Education has been brought into force which makes it obligatory for every institution to have a Headmaster who must be a Trained Graduate and must have 7 years of teaching experience as a Trained Graduate Teacher. If subsequent to 29-5-1977 any appointment has been made to the post of Headmaster contrary to the aforesaid provisions of the regulation then the said appointment would be invalid appointment and would not confer any right on the appointee. The expression "approval" used in the second direction in *Golakh Chandra Mohanty case* {(1993) 76 Cut LT 308} is referable to the approval contemplated under Rule 8(2)(*b*) of the Recruitment Rules and, therefore, if there has been an approval by the Director then in such a case the

appointment made after the prior approval would not be invalidated. The conclusion of the Special Bench that an approval of the Inspector is no approval in the eye of law is the correct position, and as such, does not require any interference by the Supreme Court. Moreover, a person who has been appointed as Headmaster-*in-charge* cannot claim any right on the basis of that appointment even if the same might have been approved by any competent educational authority. The in-charge Headmaster is not the same as the Headmaster of the school and it merely entitles a person to remain in charge and discharge the duties of a Headmaster."

In **A.Umarani v. Registrar, Coop.Societies**[3], the Supreme Court held that an appointment made in violation of the mandatory provisions of the statute and in particular, ignoring the minimum educational qualification and other essential qualification would be wholly illegal and such illegality cannot be cured by taking recourse to regularisation. The Supreme Court further held that regularisation is not and cannot be the mode of recruitment by any "State" within the meaning of Article 12 of the Constitution of India or any body or authority governed by a statutory Act and the rules framed thereunder.

In **Mohd. Sartaj v. State of U.P.**[4], the Supreme Court held that the appellants who did not possess the requisite training qualification for appointment as Assistant Teacher cannot seek a direction for being allowed to continue in service.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP No.24720 of 1999 filed by the petitioners for interim relief is disposed of as infructuous.

G.S. SINGHVI, CJ

February 14, 2007

svs

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[1] (1996) 7 SCC 118

[2] (2001) 2 SCC 480

[3] (2004) 7 SCC 112

[4] (2006) 2 SCC 315